



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

NOV 4 2004

Connie Bye

New Braunfels, TX 78132

Re: MUR 5495
(www.johnkerry-edwards.org)

Dear Ms. Bye:

On August 4, 2004, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forward to you at that time.

On October 27, 2004, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you violated 2 U.S.C. § 441h(b). Accordingly, the Commission dismissed the matter as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed, at which time you will be sent a copy of the dispositive General Counsel's Report.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lawrence H. Norton
General Counsel

BY: Lawrence L. Calvert Jr.
Deputy Associate General Counsel
for Enforcement

Enclosure:
Factual and Legal Analysis

26044141917

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Connie Bye

MUR: 5495

I. INTRODUCTION

This matter was generated by complaint filed with the Federal Election Commission filed by John Kerry for President, Inc. (the "Kerry Committee"), the principal campaign committee of Senator John F. Kerry, the Democratic Party nominee for President of the United States. Complainant alleges that the website www.johnkerry-edwards.org and its owners/operators, violated the Federal Election Campaign Act of 1971, as amended ("the Act") by fraudulently soliciting and collecting contributions through an email solicitation and a website, which the owner claimed was authorized to solicit and collect contributions on behalf of the Kerry Committee. Complainant later identified Respondent Connie Bye as the person its research had revealed was the owner/operator of the website. After a careful review of the evidence, the Commission concluded that Connie Bye is not the owner/operator of the website, but has instead been the victim of identity theft. Accordingly, there is no reason to believe that Respondent violated § 441h(b) of the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On July 29, 2004 the Kerry Committee filed a complaint alleging that unknown persons were fraudulently soliciting and collecting contributions by electronic mail and that the links in that solicitation directed recipients to a fraudulent website. Both the email and the website claimed that the solicitation was authorized by the Kerry

26044141918

Committee and that funds collected would benefit Senator Kerry. The email solicitation used by the persons responsible for the scheme was almost identical to a legitimate bulk email solicitation that had been distributed by the Kerry Committee on July 20, 2004, two days before the Kerry Committee became aware of the fraudulent email solicitation.¹

There were only two, almost indecipherable, differences between the legitimate and the fraudulent emails. First, the fraudulent email appeared to be sent from a false address, info@johnkerry.com, and correspondents who used the reply function in the email message were directed to another fake address, johnkerry@johnkerry.com.² The use of both of these fraudulent addresses in the email would have probably been unremarkable or at least confusing to a recipient of the fraudulent solicitation, as the legitimate email address for the Kerry Committee's website is www.johnkerry.com. Second, all of the links embedded in the fraudulent email solicitation were modified so a recipient who clicked on any of the links, including the contribution link, would be redirected to the unauthorized website located at www.johnkerry-edwards.org.

Both the fraudulent email solicitation and website purported to be authorized by and for the benefit of the Kerry Committee. In fact, the fraudulent email solicitation purports to be authored by Mary Beth Cahill, Campaign Manager. The email also contains the several misleading statements designed to confuse recipients, including "Paid for by John Kerry for President, Inc.," and the disclaimer "Contributions or gifts to John Kerry for President, Inc. are not deductible for federal income tax purposes." One of the links embedded in the email solicitation falsely purports to permit recipients to

¹ By July 22, 2004, when the Kerry Committee became aware of the fraudulent website, the site had been taken down and was no longer accessible.

² Complainant asserted that the Kerry Committee has received over 30,000 undeliverable emails to the johnkerry@johnkerry.com address.

26044141919

contact the campaign by stating, "To contact John Kerry for President, please click here," but the link actually directs recipients to the fake website. Another link that directs recipients to the false website contains the message, "Keep the ball rolling: Contribute!"

The web host for www.johnkerry-edwards.org identified the registered owner of the website as Connie Bye of New Braunfels, TX. The Commission sent Ms. Bye a Notice of the complaint on August 4, 2004. On August 12, 2004, Ms. Bye contacted the Commission by telephone and letter stating that she had received the complaint and categorically denying the allegations contained therein. A thorough review of the evidence indicates that Ms. Bye is not the website's owner; but is actually the victim of identity theft and someone used her personal information to establish and maintain the fraudulent website.

B. Analysis

1. Section 441h Violations

The Act prohibits the fraudulent solicitation of contributions. *See* 2 U.S.C. § 441h. Specifically, § 441h(b)(1) provides that no person shall fraudulently misrepresent that they are "speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations." 2 U.S.C. § 441h(b)(1). The Act also prohibits the "willful and knowing" participation or conspiracy to participate in any scheme designed to violate the prohibition of fraudulent misrepresentation in the solicitation of contributions or donations. 2 U.S.C. § 441h(b)(2).

The persons responsible for the scheme fraudulently misrepresented in their website and email solicitation that they were acting on behalf of and were the authorized

26044141920

agent of the Committee. The website claimed to be "Paid for by John Kerry for President, Inc." and the email solicitation received by potential donors came from the fake email address info@johnkerry.com, which would appear to the unknowing recipient to be affiliated with the candidate's authorized website www.johnkerry.com. Additionally, the persons responsible for the scheme crafted the solicitation to closely mirror email communications sent by the Kerry Committee, in a deliberate effort to mislead and confuse contributors. In fact, the persons responsible for the scheme crafted the entire legitimate email solicitation sent out by the Kerry Committee on July 20th, only changing the links to redirect recipients to their fraudulent website. Through these links the persons responsible for the scheme requested contributions, which they falsely claimed would benefit the Kerry campaign, under the heading "Keep the ball rolling: Contribute!" Complainants contend that neither the website nor the email solicitations were authorized and none of the funds, if any, collected through the website benefited the Kerry Committee.³ Thus, there is reason to believe that the persons responsible for the scheme misrepresented themselves and fraudulently solicited and collected contributions from potential donors in violation of 2 U.S.C. § 441h(b).

The Commission has determined that the evidence supports Ms. Bye's contention that she is not the owner/operator of the website or otherwise involved in the scheme at issue, but is instead the victim of identity theft. Accordingly, the Commission found no reason to believe that Connie Bye violated 2 U.S.C. § 441h(b), and the matter is dismissed as to Ms. Bye.

³ The persons responsible for the scheme have gone to great lengths to hide their identities, including using personal information stolen from Connie Bye to conceal the identity and location of the participants in this fraud scheme. For this reason, we have included "Persons Unknown" as a Respondent in this matter.

26044141921